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May 4, 2005

Date

Mark Bourgeois

Typed or Printed Name of Person Mailing Paper or Fee

Signature

5/03/2005

Date of Signature

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial no.: 09/944,932  
Filing date: 08/31/2001  
For: Euphorbia Plant named 'Charam'  
Inventor: Tickner  
Atty. Docket no.: PH39  
Group Art Unit: 1661  
Examiner: Para  
Confirmation No.: 2267

**RESPONSE**

Dear Sir:

This is in response to the Office Communication dated 03/18/2005. No additional fees are believed to be necessary.

**Request for Information under 37 CFR 1.105:**

The following information was requested in the office communication:

**A.**

Question: A copy of any publications or advertisements relating to sales or public distribution prior to the application date of the application.

Applicant's Response: No advertising was undertaken prior to the application date of the application.

**B.**

Question: Any information regarding sales or distribution anywhere in the world prior to the filing date of the application including if this was an obscure solitary occurrence.

Applicant's Response: Euphorbia Charam was first sold at 12 Notcutts Garden Centers in the United Kingdom starting on April 1, 1998. Euphorbia Charam is sold under the trade name Euphorbia Redwing. Euphorbia Charam was also marketed by Notcutts sales force directly to Garden Centers in the United Kingdom after April 1, 1998 under the name Euphorbia Redwing.

Euphorbia Charam was distributed in countries other than the United Kingdom after April 1, 1998 under a testing agreement. A copy of the testing agreement is enclosed. The testing agreement prohibits distribution of plants. The agreement limits propagation of Euphorbia Charam to be used for testing purposes only.

**C.**

Question: Any information regarding access to the plant that could be derived from the PBR document.

Applicant's Response: Applicants are not aware of any information in the PBR document that relates to accessing the plant. The PBR document does state that Charam has been sold as Redwing.

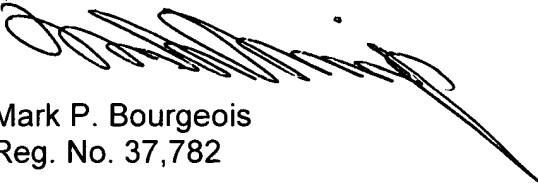
**D.**

Question: Any information that would indicate that a plant breeder would not know how to successfully reproduce the plant.

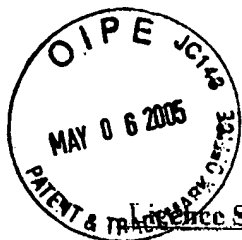
Applicant's Response: Euphorbia Charam can only be reproduced asexually. The propagation of Euphorbia Charam is greatly enhanced by dipping the cuttings in warm water prior to insertion.

The present response is believed to satisfy the Request for Information under 37 CFR 1.105.

Respectfully submitted,



Mark P. Bourgeois  
Reg. No. 37,782



## TESTING AGREEMENT

### Licence Solely to Grow and Test Plants of New Varieties, Protected or Protectable by Plant Breeders Rights - Plant Patent - Trade Mark.

This agreement made between Notcutts Nurseries, Woodbridge, Suffolk. IP12 4AF hereinafter called licensor and Fleming's Nurseries Pty Ltd. Fleming Lane (PO Box 1) Monbulk Victoria 3793 Australia. hereinafter called licensee.

Whereas the licensor has the right to licence asexual reproduction use and sale of plant varieties listed in Schedule 1 to this agreement desires to have the varieties grown and tested.

Whereas the licensee is a grower and desires the opportunity to test and grow the new varieties in Australia.

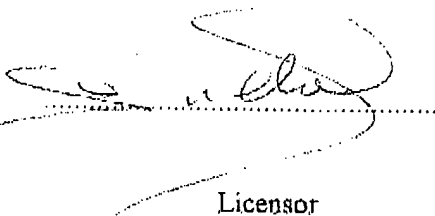
Now therefore, the licensor hereby grants to the licensee a non exclusive limited licence to grow and test for the licensor only the varieties listed below. The licensee agrees to grow the plants delivered to him by the licensor under the terms of this licence agreement which are as follows:-

1. That all scions, cuttings, plants received by the licensee shall remain the property of the licensor.
2. Licensee agrees to keep accurate records of growth, flowering and other responses and to forward this information to the licensor as requested.
3. That licensee will not report on, describe for publication, or exhibit at flower shows or otherwise display publicly any of the varieties covered by this licence except by specified written permission from licensor.
4. Any commercially distinct sport shall be reported by the licensee to the licensor and no further action will be taken on these without mutual agreement. Any such mutations will be owned jointly by both of them.
5. That licensee will not ship, transport, transfer or assign any of these plants or any parts thereof to any other person or persons, domestic or foreign, for any purpose whatsoever.
6. That the licensor has the right to terminate this licence at any time and to repossess said plants and for such purpose to come upon property of licensee and take possession of said plants without any process of law.
7. The licensee is allowed to reproduce and use plant material of the varieties for testing purposes only. It is forbidden to use the plants during the testing period for breeding purposes in any way.

**BEST AVAILABLE COPY**

8. The testing period shall be for two years. After the trials the licensee will conform to all the instructions given by the licensor concerning the plants. The testing period may be extended by mutual agreement.

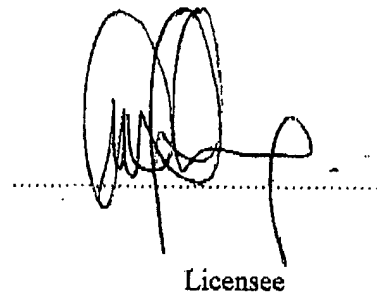
Signed By  
Notcutts Nurseries



Licensor

Date 10.1.2000

Signed by  
Fleming's Nurseries Pty Ltd.



Licensee

Date 10.1.2000

**Schedule One**

**Euphorbia 'Redwing' (Charam)**  
**Euphorbia 'Wilcott'**  
**Clematis F124 'Eleanor'**  
**Clematis F141 'Ragamuffin'**  
**Clematis G54 'Albatross'**  
**Clematis N1 'Anniversary'**

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